

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Joint)
Application of)
)
AMERICATEL CORPORATION, and)
STARTEC GLOBAL OPERATING COMPANY)
)
For Approval of a *Pro Forma*)
Reorganization and to Transfer a)
Certificate of Authority.)
_____)

DOCKET NO. 2007-0358

DECISION AND ORDER NO. 24120

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii

Karen Higashi

In the Matter of the Joint
Application of

AMERICATEL CORPORATION, and
STARTEC GLOBAL OPERATING COMPANY

For Approval of a *Pro Forma*
Reorganization and to Transfer a
Certificate of Authority.

Decision and Order No. 24120

By this Decision and Order, the commission:

(1) waives the investigatory and approval requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a) and 269-19, pursuant to HRS § 269-16.9(e), and Hawaii Administrative Rules ("HAR") § 6-80-135, regarding the merger of AMERICATEL CORPORATION ("Americatel") and STARTEC GLOBAL OPERATING COMPANY ("Startec") (collectively, "Applicants"), with Americatel surviving;¹

(2) approves the transfer of Startec's Certificate of Authority ("COA")² to Americatel to provide resold intrastate telecommunications services in the State of Hawaii ("State"),

²On June 3, 1996, HAR chapter 6-80 took effect. HAR chapter 6-80, among other things, replaced the CPCN with a COA for telecommunications carriers, and established procedures for requesting and issuing a COA.

subject to certain conditions specifically stated herein; and (3) waives the requirements of HRS § 269-16.92 governing customer notices to the extent that it is inconsistent with the Federal Communications Commission's ("FCC") requirements, pursuant to HRS § 269-16.9(e), and HAR § 6-80-135.

I.

Background

A.

Applicants

Americatel is a Delaware corporation servicing customers in the United States, Latin America, and the Caribbean.³ It provides "international and domestic facilities-based and resold long distance services, including 'dial around' casual calling (i.e., 1010XXX) service and presubscribes 1+ calling services, in each of the 48 contiguous states."⁴ It is not authorized to provide intrastate services in Hawaii.⁵

Startec, a Delaware corporation, is a wholly-owned direct subsidiary of Startec Global Communications Corporation ("SGCC").⁶ It provides "long distance, [i]nternet, and other communications services to persons and businesses residing in 49 states (all except Alaska) and the District of Columbia, as

³Application, at 3.

⁴Application, at 3.

⁵Application, at 3.

⁶Application, at 3.

well as Canada."⁷ In Hawaii, Startec holds a COA to provide resold intrastate, telecommunications service."⁸ Applicants state that in "1999, a COA to resell telecommunications service was granted to Startec Global Licensing Company ("SGLC"), a former sister company of Startec. Through a *pro forma* restructuring approved by the [c]ommission (in which SGLC was merged into Startec), Startec became the surviving entity and the holder of the COA."⁹

Platinum Equity, LLC ("Platinum Equity") is a Delaware limited liability company headquartered in Beverly Hills, California. Applicants state:

[Platinum Equity] has indirectly held 95 percent of the equity of Americatel since July 2006. [It] currently holds its 95 percent interest in Americatel through its wholly-owned subsidiary, MTAC Holding Corporation, a Delaware corporation, which in turn is a wholly-owned subsidiary of EnergyTRACS Acquisition Corp. ("EnergyTRACS"), a Delaware corporation, and a wholly-owned subsidiary of Platinum Equity. Platinum Equity acquired indirect control of Startec on July 12, 2007, when it acquired indirect ownership of 100 percent of the equity in Startec. Platinum Equity currently holds this interest through its wholly-owned subsidiary, SGCC, which in turn, is a direct subsidiary of EnergyTRACS. On or about December 31, 2007 and upon receipt of all necessary regulatory approvals, Applicants intend to implement a minor internal corporate reorganization that will result in Platinum Equity holding its interest in Startec indirectly through Americatel.

⁷Application, at 3.

⁸Application, at 3-4.

⁹Application, at 4 n.3 (internal citations omitted); Decision and Order No. 23437, filed on May 15, 2007, in Docket No. 2007-0081.

Application, at 4. Platinum Equity "is a global firm specializing in the merger, acquisition and operation of companies that provide services and solutions to customers in a broad range of business markets, including [among other things] information technology, [and] telecommunications."¹⁰

B.

Application

On October 25, 2007, Applicants filed a request for commission approval to conduct a *pro forma* company reorganization and transfer of COA as described in the Application.¹¹ Specifically, Applicants request that the commission:

Issue an order (a) waiving (i) a *pro forma* corporate restructuring involving the merger of the Applicants (with Americatel surviving), (ii) transfer of Startec's [COA] to Americatel, and (iii) customer notification requirements under [HRS] § 269-16.92, as set forth herein, from [c]ommission approval and other applicable [c]ommission requirements, pursuant to HRS § 269-16.9(e) and [HAR] § 6-80-135; or, in the alternative, (b) to the extent a waiver is not appropriate, (i) a *pro forma* corporate restructuring involving the merger of the Applicants (with Americatel surviving) and (ii) the transfer of Startec's COA to Americatel, described below, pursuant to HRS §§ 269-7(a) and 269-19.

Application, at 1. With approval of the proposed merger, "Startec and SGCC, its immediate parent and a holding company,

¹⁰Application, at 4.

¹¹Applicants served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an *ex officio* party to this proceeding pursuant to HRS § 269-51 and HAR § 6-61-62. No persons moved to intervene or participate in this docket.

will cease to exist and Americatel will become the operating telecommunications service provider in Hawaii, serving all Americatel and Startec customers"¹² Moreover:

[the] restructuring will be seamless and transparent to Startec's customers. There will be no change in the ultimate ownership or control of Americatel, which will remain with Platinum Equity, the entity that also currently controls Startec. Service will be provided using the same network, billing systems and customer service operations currently used by Startec. No existing service will be discontinued, reduced, or impaired as a result of the *pro forma* corporate restructuring. Thus, the proposed transaction will cause no interruption in service to customers. In addition, Americatel will serve Startec's customers using the same rates, terms, and conditions that currently apply under Startec.

Application, at 6.

Applicants submit the financial information of Americatel in support of their Application. In addition, they reference the financial information filed by Startec in its application for approval for the indirect transfer of control of Startec to Platinum Equity, LLC.¹³ Applicants request a waiver or exemption from any requirement for other financial or other documentation pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.

The Application states:

Applicants are non-dominant carriers in Hawaii and much of the telecommunications services provided by Applicants are competitive. Moreover, as discussed below, (a) the proposed transaction will streamline and eliminate inefficiencies from business and administrative operations of Startec and Americatel; (b) the proposed transaction will strengthen competition in Hawaii by helping

¹²Application, at 5.

¹³See Docket No. 2007-0081.

Americatel's business to grow and by putting Americatel in a better position to expand its service offerings; and (c) the proposed transaction will benefit customers by permitting Americatel to integrate Startec's assets into its own services to create new, 'best-of-class offerings.' In addition, Startec currently serves fewer than 100 customers in Hawaii. A waiver of the proposed transaction is, therefore, in the public interest.

Application, at 7-8.

Applicants request that the commission waive the requirements of HRS § 269-16.92 to the extent that they are inconsistent with the FCC's rules governing the sale of a carrier's customer base.¹⁴ In compliance with FCC rules, Applicants will provide at least 30 days' written notice to each subscriber affected by this transaction by including notice of:

1. the date on which the acquiring carrier will become the subscriber's new provider of telecommunications service;
2. the rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the subscriber's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the subscriber of any change(s) to these rates, terms, and conditions;
3. the fact that the acquiring carrier will be responsible for any carrier change charges associated with the transfer;
4. the subscriber's right to select a different preferred carrier for the telecommunications service(s) at issue, if an alternative carrier is available;
5. the fact that all subscribers receiving the notice, even those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring carrier, unless they have selected a different

¹⁴Application, at 8.

carrier before the transfer date; existing preferred carrier freezes on the service(s) involved in the transfer will be lifted; and the subscribers must contact their local service providers to arrange a new freeze;

6. the identity of the carrier that [] will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring carrier; and

7. the toll-free customer service telephone number of the acquiring carrier.

Application, at 8-9 (footnotes omitted). Applicants note, "[a] waiver of the requirements under HRS § 269-16.92 governing customer notices in this context will serve the public interest because, without such a waiver, customers would receive multiple redundant (and potentially inconsistent) notices that could cause them confusion. A waiver would also prevent duplicative expenses that would result in increased costs for the Applicants and ultimately could be transferred to customers in the form of higher prices."¹⁵ Applicants state that "the proposed transaction will streamline and eliminate inefficiencies from the business and administrative operations of Startec and Americatel. . . . [which will create] significant cost savings and operational benefits."¹⁶

Regarding the name Applicants will utilize, they have presented conflicting positions. First, they stated that "Americatel will assume the customers and operations of Startec, but will continue to use the Startec brand name for those

¹⁵Application, at 9.

¹⁶Application, at 11.

customers, possibly on a co-branded basis."¹⁷ Subsequently, Applicants stated "[e]xcept for the name change from Startec to Americatel, Applicants do not anticipate any substantive changes to Startec's existing tariff filed with the [c]ommission as [a] result of this proposed transaction."¹⁸ After inquiry by the commission, Applicants now indicate that they intend to use the Startec name; technically, Americatel will be doing business as ("dba") Startec.¹⁹

C.

Consumer Advocate's Statement of Position

On November 20, 2007, the Consumer Advocate filed its Statement of Position ("Statement of Position") informing the commission that it does not object to the commission waiving the approval requirements of HRS § 269-19 pursuant to the provisions set forth in HRS § 269-16.9(e) and HAR § 6-80-135.²⁰ If the commission is not inclined to waive its approval authority, then the Consumer Advocate recommends approval of Applicants' request.²¹

¹⁷Application, at 5.

¹⁸Application, at 6 n. 5.

¹⁹On March 17, 2008, in response to telephonic inquiry by the commission, Applicants clarified their intention.

²⁰Statement of Position, at 1.

²¹Statement of Position, at 1-2.

The Consumer Advocate provides:

- Startec is one of many resellers of telecommunication services authorized to provide service in the State.
- Startec continues to be a non-dominant carrier of telecommunications service in the State of Hawaii. Startec's total intrastate revenue for 2006 was less than \$1,000 and Startec currently serves less than 100 Hawaii customers.
- Applicants state that after the *pro forma* merger, Americatel will provide Startec's former customers with telecommunications service, without interruption or change in rates, terms, and conditions related to the services they obtain from the acquisition. The ultimate ownership of Americatel will remain with Platinum Equity. Services provided by Americatel will be supplied using the same network, billing systems, and customer service operations as used by Startec. Furthermore, Applicants state that the current services will not be discontinued, reduced, or degraded by the *pro forma* corporate restructuring. As a result, Applicants expect the transaction to be seamless and transparent to Startec's customers.
- Applicants assert that the proposed transaction will serve the public interest by strengthening competition in Hawaii since Americatel's [sic] is expected to be able to increase the services provided to [its] customers, [thus, it will increase] its business. The transaction, Applicants claim, will streamline and remove inefficiencies from Startec's and Americatel's business and administrative operations, resulting in significant cost savings and operational benefits due to network integration, reduced overhead and administrative costs, synergies from information systems integration, and other sources.
- In addition, since Startec is a non-dominant telecommunications carrier in the State, and given the number of carriers that are authorized to provide the same telecommunications services as Startec's services, the Consumer Advocate finds that competition should continue to serve the same purpose as public interest regulation even if there are subsequent service quality issues arising from the consummation of the requested proposed reorganization and transfer of COA.

Startec's customers, therefore, will still have the ability to obtain the telecommunications services offered by Startec in Hawaii from other telecommunications providers authorized to provide the same services in the State should Startec be unable to continue providing such services.

In view of the above, the Consumer Advocate does not object to a [c]ommission waiver of the investigative and approval requirements set forth in HRS §§ 269-7(a) and 269-19 in their entirety pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.

Statement of Position, at 6-7 (footnotes omitted).

The Consumer Advocate notes that it "is inclined to agree with Applicants that a waiver of the notification requirements set forth in HRS § 269-16.92 is in the best interest of Startec's Hawaii consumers because it would prevent customers from receiving redundant notices and eliminate the need to incur duplicative notification expenses."²²

Finally, the Consumer Advocate states that "[i]f the [c]ommission is not inclined to grant the requested waivers, the Consumer Advocate recommends approval of the proposed (a) a *pro forma* corporate restructuring involving the merger of the Applicants (with Americatel surviving) and (b) the transfer of Startec's COA to Americatel for the same reasons supporting the requested waivers."²³

²²Statement of Position, at 9.

²³Statement of Position, at 10.

II.

Discussion

A.

Proposed Merger of Americatel and Startec

HRS § 269-19 provides, in relevant part, that: "[N]o public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means directly or indirectly, merge or consolidate with any other public utility corporation, without first having secured from the public utilities commission an order authorizing it so to do." HRS § 7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Thus, the commission has jurisdiction to review proposed transactions of the parent entity of a regulated public utility under HRS § 269-7(a). The proposed merger described above falls under the commission's purview under HRS §§ 269-19 and 269-7(a).

Nonetheless, HRS § 269-16.9 also permits the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of

any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

Upon review of the record in this docket, particularly Applicants' representations, the commission finds the following: (1) much of the telecommunications services currently provided by Startec are competitive; (2) Americatel and Startec are non-dominant carriers in the State; (3) the proposed corporate restructuring is consistent with the public interest; and (4) competition, in this instance, will serve the same purpose as public interest regulation.

Based on the foregoing, the commission will waive the requirements of HRS §§ 269-7(a) and 269-19, to the extent applicable, regarding the proposed merger, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.²⁴ Similarly, the commission also finds it in the public interest to waive the applicability of HAR § 6-61-105 to the extent that the Application in this docket is not in compliance with those rules. Thus, for purposes of considering this Application, the commission will not require the information and documents normally required upon the filing of such Application.

²⁴See Decision and Order No. 18454, filed on March 28, 2001, in Docket No. 00-0443. The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-7(a), 269-17, and 269-19 should be waived. The commission's determination, in the instant case, of the applicability of HRS §§ 269-7(a) and 269-19 is based on our review of the instant Application only. Thus, the commission's waiver in this instance of the applicability of HRS §§ 269-7(a) and 269-19 should not be construed by any public utility, including Applicants, as a basis for not filing an application or petition regarding similar transfers that fall within the purview of these statutes.

B.

Proposed Transfer of Startec's COA to Americatel

HRS § 269-19 also specifically provides, in relevant part, that: "[N]o public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of . . . any franchise or permit, or any right thereunder . . . without first having secured from the public utilities commission an order authorizing it so to do."

Applicants contend that Americatel is financially qualified to provide telecommunications services in Hawaii. It provides telecommunications services nationwide and with the financial backing of its ultimate parent company, Platinum Equity, it has access to financing and capital necessary to conduct its telecommunications operations and to fulfill any obligation it may undertake with respect to the operation and maintenance of its services. Moreover, Applicants claim that Americatel has the technical and managerial qualifications to provide telecommunications services in Hawaii.

Americatel must independently meet the COA requirements under HAR § 6-80-18(a):

The commission shall issue a certificate of authority to any qualified applicant, authorizing the whole or any part of the telecommunications service covered by the application, if it finds that:

- (1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed telecommunications service in the State;

- (2) The applicant is fit, willing, and able to properly perform the proposed telecommunications service and to conform to the terms, conditions, and rules prescribed or adopted by the commission; and
- (3) The proposed telecommunications service is, or will be, in the public interest.

Upon review of the record herein, the commission makes the following findings pursuant to HAR § 6-80-18(a):

1. Americatel possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed services, as the proposed transaction is merely a *pro forma* corporate restructuring.²⁵

2. Americatel is fit, willing, and able to properly perform the telecommunications services as evidenced by Americatel's representations and the documents submitted in support of its claims. Moreover, the commission's grant of a transfer of Startec's COA to Americatel will be conditioned upon its conformity to the terms, conditions, and rules prescribed or adopted by the commission, as discussed below.

3. The transfer of Startec's COA to Americatel is in the public interest. The restructuring may provide efficiencies in the business and administrative operations of Startec and Americatel.²⁶

Based on the foregoing, the commission approves the transfer of Startec's COA to Americatel, pursuant to HRS § 269-19, subject to the following conditions:

²⁵Application, at 5.

²⁶Application, at 11.

1. Within thirty (30) days of the date of this Decision and Order, Americatel shall file its initial tariff, incorporating the change in name from Startec to Americatel dba Startec; and
2. Americatel shall continue to be accountable for any and all of Startec's unpaid public utility fees due to the commission, pursuant to HRS § 269-30, and any and all of Startec's annual financial reports that are required to be filed with the commission in accordance with HAR § 6-80-91.

B.

HRS § 269-16.92 Requirements

HRS § 269-16.92 provides that a telecommunications carrier shall not initiate a change in a subscriber's selection or designation of a long distance carrier without first obtaining authorization from the affected subscriber. Furthermore, HAR § 6-80-123 states, in relevant part, that "[a] telecommunications carrier intending or seeking to abandon or discontinue offering or providing a fully or partially competitive service shall, not later than thirty [(30)] days before the proposed date of abandonment or discontinuance, provide a written notice of its intent to the commission, the [C]onsumer [A]dvocate, and its affected customers."²⁷

²⁷HAR § 6-80-123(a).

As previously stated, Applicants request a waiver of the requirements of HRS § 269-16.92 to the extent that it is inconsistent with the FCC rules governing the sale of a carrier's customer base.²⁸ The rationale for such waiver is to reduce the inconvenience to ratepayers of receiving duplicative notices; and to minimize Applicants' expenses to increase their competitive position.²⁹ Based on the above, the commission waives the requirements of HRS § 269-16.92 governing customer notices to the extent that they are inconsistent with the FCC's requirements, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.

C.

Tariff Revisions

Applicants have indicated that they intend to operate as Americatel, dba Startec. Therefore, the Startec tariff must be revised to reflect the change accordingly. An original and eight (8) copies of Applicants' revised initial tariff shall be filed with the commission, and two (2) additional copies shall be served on the Consumer Advocate. Applicants shall ensure that the appropriate issued and effective dates are reflected in its tariff.

²⁸Application, at 8.

²⁹Application, at 9.

III.

Orders

THE COMMISSION ORDERS:

1. The commission waives, to the extent applicable, the investigatory and approval requirements of HRS §§ 269-7(a) and 269-19, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135 regarding the merger of Americatel and Startec, with Americatel surviving.

2. The commission approves the transfer of Startec's COA to provide resold intrastate telecommunications services to Americatel, subject to the following conditions:

- a. Within thirty (30) days of the date of this Decision and Order, Americatel shall file its initial tariff, incorporating the change in name from Startec to Americatel dba Startec; and
- b. Americatel shall continue to be accountable for any and all of Startec's unpaid public utility fees due to the commission, pursuant to HRS § 269-30, and any and all of Startec's annual financial reports that are required to be filed with the commission in accordance with HAR § 6-80-91.

3. The requirements of HRS § 269-16.92, to the extent applicable, are waived, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.

4. As the holder of a COA, Americatel shall be subject to all applicable provisions of HRS chapter 269, HAR chapters 6-80 and 6-81, any other applicable State laws and commission rules, and any orders that the commission may issue from time to time.

5. Americatel shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Said tariffs shall incorporate the revisions discussed in Section II.C of this Decision and Order and the provisions of HAR chapter 6-80. In the event of a conflict between any tariff provisions and State law, State law shall prevail.

6. An original and eight (8) copies of the initial tariff, with the noted revisions, shall be filed with the commission, and two (2) additional copies shall be served on the Consumer Advocate. Americatel shall ensure that the appropriate issued and effective dates are reflected in its tariffs.

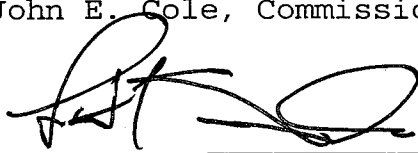
7. Applicants shall promptly comply with the requirements set forth above. Failure to promptly comply with these requirements may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii APR - 1 2008.

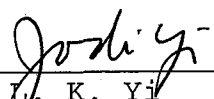
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Jodi L. K. Yi
Commission Counsel

2007-0358.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24120 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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